

## Message Text

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PAGE 01 GENEVA 09223 190951Z  
ACTION STR-07

INFO OCT-01 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01  
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10  
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OMB-01 DOE-15 /114 W  
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TO SECSTATE WASHDC 0974  
INFO ALL EC CAPITALS

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PASS ELECTRONICALLY STR AND AGRICULTURE  
LONDON PASS TOM SAYLOR

E.O. 11652: N/A  
TAGS: GATT MIP  
SUBJECT: MIP PANEL REPORT

1. BEGIN SUMMARY: IN A POTENTIALLY FAR-REACHING  
DECISION, GATT PANEL ON MIP'S HAS CONCLUDED THAT THE  
EUROPEAN COMMUNITY'S MIP SYSTEM FOR TOMATO CONCENTRATES  
IS NOT REPEAT NOT CONSISTENT WITH GATT ARTICLES II AND XI.  
PANEL ALSO CONCLUDED, HOWEVER, THAT EC'S IMPORT LICENSING  
SYSTEM FOR PROCESSED FRUITS AND VEGETABLES IS CONSISTENT  
WITH THE EC'S GATT OBLIGATIONS. PANEL'S REPORT WILL BE  
SUBMITTED TO THE COUNCIL IN SEPTEMBER. COPIES OF THE  
REPORT MAY BE MADE AVAILABLE SOON TO THE U.S. AND EC.  
END SUMMARY.

2. THE GATT PANEL ESTABLISHED IN 1976, AND RECONSTITUTED  
IN 1977, TO EXAMINE THE U.S. COMPLAINT CONCERNING THE  
EC'S MINIMUM IMPORT PRICE SYSTEM FOR TOMATO CONCENTRATES  
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PAGE 02 GENEVA 09223 190951Z

AND THE IMPORT LICENSING/SURETY DEPOSIT SYSTEM FOR  
PROCESSED FRUITS AND VEGETABLES, MET WITH U.S. AND EC  
REPRESENTATIVES ON JUNE 16 TO INFORM THEM OF ITS FINDINGS.  
THE PANEL'S REPORT WILL GO TO THE COUNCIL ON SEPT 1 AND  
WILL BE ON THE AGENDA OF THE FIRST COUNCIL MEETING IN THE  
FALL UNLESS THE U.S. WITHDRAWS ITS COMPLAINT. PANEL  
CHAIRMAN JAGMETTI SAID THAT THE PERIOD BETWEEN NOW AND

SEPTEMBER WILL BE A TIME FOR REFLECTION AND FOR THE PARTIES TO TRY TO SETTLE THE DISPUTE.

3. THE PANEL'S REPORT, GIVEN ORALLY BY JAGMETTI, IS EXTREMELY LENGTHY AND COMPLEX. THEREFORE, WE RECOMMEND THAT ANALYSES AWAIT DISTRIBUTION OF THE WRITTEN REPORT. WE EXPECT TO BE ABLE TO OBTAIN COPIES SOON FROM THE SECRETARIAT. THE BASIC FINDINGS OF THE PANEL FOLLOW.

4. IMPORT LICENSING AND SURETY DEPOSIT SYSTEM. THE PANEL CONCLUDED THAT THIS SYSTEM IS NOT REPEAT NOT INCONSISTENT WITH ARTICLES I, II, VIII, AND XI AS ALLEGED BY THE U.S. IN BRIEF, THE PANEL FOUND THAT: A. THE LICENSING REQUIREMENTS ARE NOT A RESTRICTION PROHIBITED BY ARTICLE XI AND ARE NOT ONEROUS ENOUGH TO VIOLATE ARTICLE VIII; B. THE INTEREST AND OTHER COSTS ASSOCIATED WITH THE SYSTEM ARE ADMINISTRATIVE COSTS COMMENSURATE WITH THE COST OF SERVICES RENDERED; C. THE SURETY DEPOSIT IS AN ENFORCEMENT MECHANISM AND NOT AN ADDITIONAL IMPORT CHARGE IN CASE OF FORFEITURE BECAUSE NO IMPORTATION HAS OCCURRED.

5. MINIMUM IMPORT PRICE SYSTEM. THE PANEL CONCLUDED THAT THE MIP SYSTEM, AS ENFORCED BY THE SURETY DEPOSIT MECHANISM, IS INCONSISTENT WITH ARTICLES II AND XI BUT CONSISTENT WITH ARTICLES I AND VIII.  
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PAGE 03 GENEVA 09223 190951Z

6. THE PANEL FOUND THAT THE MIP FOR TOMATO CONCENTRATES IS A RESTRICTION OTHER THAN A DUTY, TAX OR OTHER CHARGE, AND DOES NOT QUALIFY FOR AN EXEMPTION FROM ARTICLE XI UNDER ARTICLE XI 2(C)1 AND 2. IN REACHING THIS CONCLUSION THE PANEL CONSIDERED TOMATO CONCENTRATES TO BE A PERISHABLE AGRICULTURAL PRODUCT BUT THAT THE EC'S INTERVENTION SYSTEM FOR FRESH TOMATOES DOES NOT OPERATE EFFECTIVELY TO RESTRICT PRODUCTION OR MARKETING, OR TO REMOVE A TEMPORARY SURPLUS OF FRESH TOMATOES AND TOMATO CONCENTRATES.

7. IN REGARD TO ARTICLE II, THE PANEL CONSIDERED THAT INTEREST AND OTHER COSTS ASSOCIATED WITH THE MIP SYSTEM WERE IN EXCESS OF BOUND RATES AND THEREFORE INCONSISTENT WITH THE COMMUNITY'S OBLIGATIONS. FORFEITURE OF THE SURETY DEPOSIT, HOWEVER, WAS CONSIDERED AN ENFORCEMENT MEASURE AND NOT AN IMPORT CHARGE.

8. THE FINAL POINT ADDRESSED BY THE PANEL WAS NULLIFICATION OR IMPAIRMENT. THE PANEL CONCLUDED THAT: A) FOR THE IMPORT LICENSING SYSTEM NO PRIMA FACIE CASE FOR

NULLIFICATION OR IMPAIRMENT SINCE THIS SYSTEM IS  
CONSISTENT WITH GATT ARTICLES. FURTHERMORE, THE PANEL  
COULD FIND NO EVIDENCE OF DAMAGE THAT WOULD JUSTIFY  
A FINDING OF NULLIFICATION AND IMPAIRMENT; B) THERE IS  
A PRIMA FACIE CASE FOR NULLIFICATION OR IMPAIRMENT BY  
THE MIP SYSTEM BECAUSE THIS SYSTEM IS INCONSISTENT WITH  
ARTICLES II AND XI.

9. U.S. AND EX REPRESENTATIVES STATED THAT THEIR  
GOVERNMENTS WOULD HAVE TO STUDY THE REPORT VERY  
THOROUGHLY BECAUSE OF ITS LENGTH AND COMPLEXITY. THE  
EC REP ADDED THAT THE MIP SYSTEM FOR TOMATO CONCENTRATES  
HAS RECENTLY BEEN ELIMINATED. VANDEN HEUVEL

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## Message Attributes

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**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Draft Date:** 19 jun 1978  
**Decaption Date:** 01 jan 1960  
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**Disposition Approved on Date:**  
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